IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.25 of 2003(O&M)

Decided on : September 06, 2010

Jasmair Singh

... Petitioner

VERSUS

State of Punjab

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Anant Kataria,
Advocate for the petitioner.

Mr.Amit Chaudhary, Assistant Advocate General
for the respondent – State of Punjab.

A.N.JINDAL, J.-

This petition has arisen out of the judgment dated 21.11.2002 dismissing the appeal of the accused – petitioner Jasmair Singh (herein referred as `the accused') against the judgment dated 23.5.1998 passed by Sub Divisional Judicial Magistrate, Malout convicting and sentencing him to undergo rigorous imprisonment for two years and to pay fine of Rs.500/- under Section 409 IPC and to undergo rigorous imprisonment for one year and to pay fine of Rs.500/- under Section 201 of the Indian Penal Code 1860.

Factual matrix of the case is that the accused while posted as Head Constable at Police Station Lambi apprehended an accused in case FIR NO.107 dated 4.9.1991 under Section 25 of the Arms Act registered at

Police Station Lambi and recovered a pistol and two live cartridges, but he did not prepare the file and deposit the same in the `Malkhana' and also did not hand over the same to any other Investigating Officer. He also did not send any document or case diary to VRK Branch. Resultantly, he was dismissed from service and on account of mis-appropriation of the pistol and two live cartridges, the present case was registered against him and the investigation commenced. Ultimately, the report under Section 173 of the Code of Criminal Procedure, 1973 was filed in the court.

Finding a prima facie case against the accused, he was charged under Section 409/201 IPC, to which he pleaded not guilty and claimed trial.

In order to substantiate the charges, the prosecution examined Gurmail Singh (PW1), Balbir Singh Khaira S.P.(D) (PW2), Sub-Inspector Daulat Ram (PW3), Sh.Mukhtiar Singh DSP (PW4), Assistant Sub Inspector Babu Singh (PW5), ASI Hukam Chand (PW6), HC Dilbag Singh (PW7), HC Shiv Kumar (PW8) and Gurdarshan Singh Assistant Sena Clerk (PW9).

When examined under Section 313 CrPC, the accused denied all the allegations and further submitted that he had deposited the case property and handed over the case file to the-then MHC Shiv Kumar. However, he admitted that he was dismissed from service on 26.8.1994. The trial ended in conviction and the appeal preferred by him also failed.

Arguments heard. Record perused.

There is no denying a fact that the accused being Investigating Officer of the case FIR NO.107 dated 4.9.1991 under Section 25 of the Arms Act registered at Police Station Lambi against Pala Singh had

apprehended him and recovered a pistol and two live cartridges from him. Then, the inference would be drawn that the pistol and the live cartridges recovered from Pala Singh would remain in the possession of the accused, till the same are deposited with MHC. As such, Shiv Kumar while appearing in the witness box as PW8 has testified that in case FIR No.107 dated 4.9.1991 under Section 25 of the Arms Act, the accused had not deposited the case property and also had not handed over the case file to him. The DDR entry (Ex.PG/1) proved on record, of the relevant date, does not indicate if the case property was deposited with the MHC. Here it is only mentioned that the case property would be deposited with the MHC. This statement made by the accused himself in the DDR could, in no way, be used in his favour. It is only the `Malkhana Register', which is known as Register No.19, which could be the best evidence about the deposit of the case property. Ex.PH/1 (Register `19') indicates that no case property of the said case was deposited with the MHC by the accused. The said entry reflects that only the particulars of the case, names of the Investigating Officer and the accused from whom the recovery was effected, have been mentioned, but the column of "case property" is lying vacant. All the witnesses examined by the prosecution corroborate this fact. Even otherwise, both the courts below have concurrently confirmed the fact that the accused did not deposit the case property with MHC Shiv Kumar, therefore, he was certainly liable to be indicted for the charge framed against him.

Moreover, it would not be appropriate for this Court to examine the evidence so meticulously at the revisional stage as the interference at this stage could be made very sparingly and only in cases

where the judgment was palpably wrong, perverse or ignoring the relevant evidence or taking into consideration irrelevant evidence or the court while holding the trial misconducted the proceedings. It has also been observed by the Apex Court in case **Duli Chand vs. Delhi Administration**, *AIR 1975 SC 1960* that the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a re-appreciation of evidence. Further, on the issue, it held as under:-

> "Now, it is obvious that the question whether the appellant was guilty of negligence in driving the bus and the death of the deceased was caused on account of his negligent driving is a question of fact which depends, for its determination, on an appreciation of the evidence. Both the learned Magistrate trying the case at the original stage and the learned Additional Sessions Judge hearing the appeal arrived, on an assessment of the evidence, at a concurrent finding of fact that the death of the deceased was caused by negligent driving of the bus by the appellant. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct."

Similarly, while discussing the scope of revision, the Apex

Court in case **State of Kerala vs. Puttumana Nath Jathavedan Namboodiri**, *AIR 1999 SC 981* held as under:-

> "Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

Similarly, the Apex Court in **Bindeshwari Prasad Singh alias R.P.Singh and others vs. State of Bihar (now Jharkhand) and another**, *2002(4) RCR(Criminal) 61 (SC)* observed that in the absence of

any legal infirmity either in the procedure or in the conduct of the trial, there is no justification for the High Court to interfere in exercise of its revisional jurisdiction. Once again, this view was taken in case **State of Maharashtra vs. Sanjay Mangesh Poyarekar**, *2008(4) RCR(Crl.) 555*.

The crux of the discussion is that the re-appreciation of the evidence at revisional stage is not permissible and the power of this Court to interfere at such a stage is very limited. This court finds no illegality, infirmity or irregularity in the impugned judgments, which self-speak about the criminal breach of trust and misappropriation by the petitioner. Hence, the finding of guilt recorded by the courts below deserves to be upheld.

Now, coming to the quantum of sentence, the accused was a member of a disciplined force and expectations of the Society from such a person are higher than an ordinary man, therefore, the sentence of two years does not appear to be on the higher side. Hence, it also needs no interference.

Consequently, the petition is dismissed.

Copy of the judgment be sent to the Chief Judicial Magistrate, Faridkot for compliance.

September 06, 2010 (A.N.JINDAL)
`gian' JUDGE